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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1940.

No. 1016. 69

C. A. ROSS, AGENT, INC., a corporation of North Carolina, (amended by order of the Court to read ROSS MOTOR LINES, INC.),

Petitioner,

vs.

LOUIS VENUTO, Administrator ad Prosequendum and General Administrator of the Estate of ELVIRA VENUTO, deceased, and Administrator ad Prosequendum and General Administrator of the Estate of ANNA VENUTO, deceased, FLORENCE VENUTO, VITO CUOZZO and MARIE CUOZZO,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI

REPLY BRIEF

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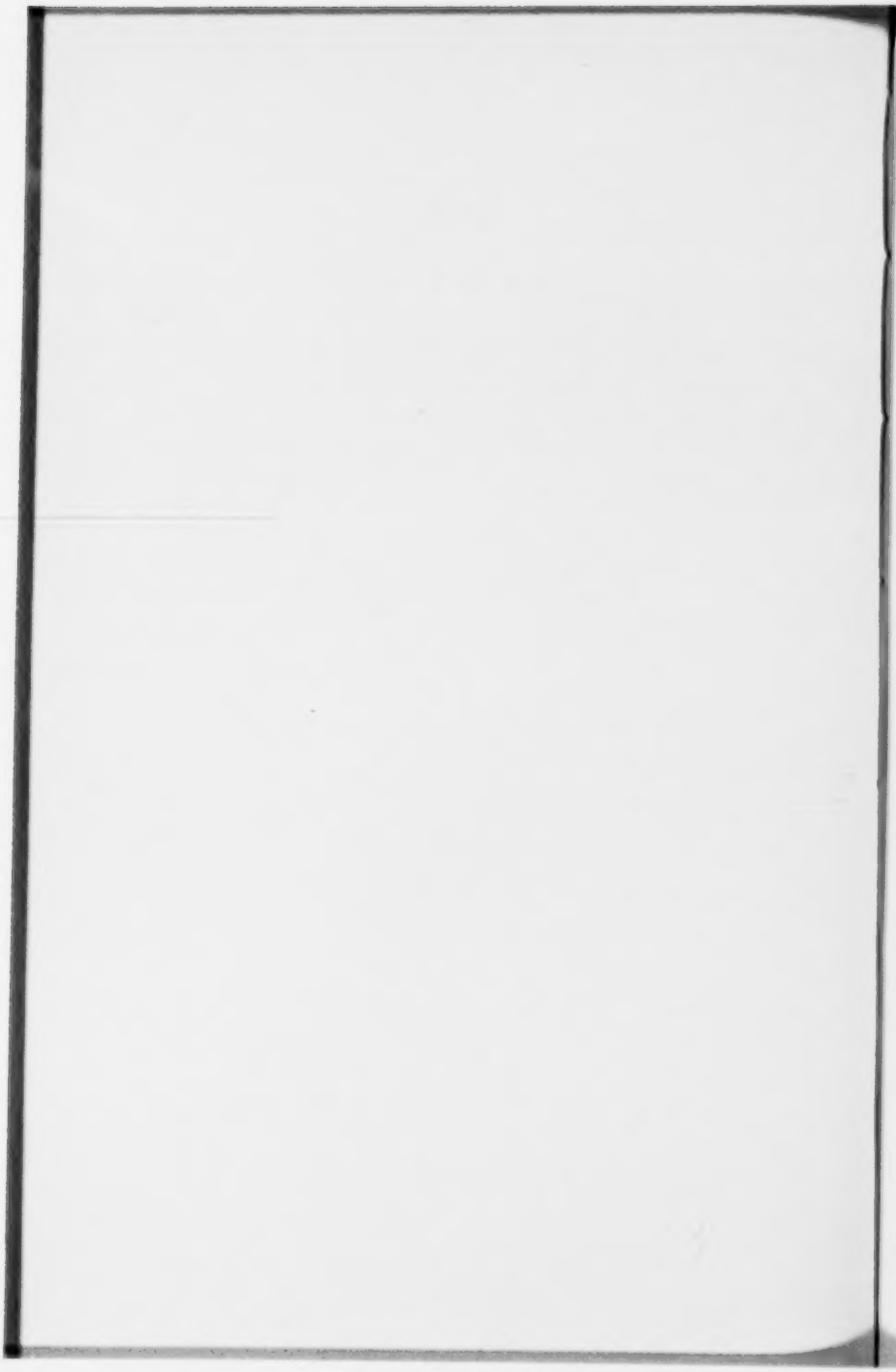

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Statement

Stress is laid in the brief of the respondents upon the alleged failure of the defendant, Robinson, to comply with certain provisions of the Motor Carrier Act, 1935. This contention is without merit. We are here definitely dealing with two authorized carriers. Robinson was operating under authority of the "Grandfather" clause of the Motor

Carrier Act, 1935 (49 U.S.C.A. 306; 49 Stat. 551 and 49 U.S.C.A. 309; 49 Stat. 552), by filing his application in full compliance with the requirements of the act (Exhibit D-7, p. 178, Supplemental Appendix). He had also filed tariffs (Exhibit D-12, pp. 183 to 187, Supplemental Appendix). This was a joint tariff with C. A. Ross, Agent.

The bare statement in the respondents' brief and Exhibits P-33 and P-34 that individual tariffs had not been filed nor that an agency tariff had not been filed, does not set up a full disclosure as to the contents of the records of the Interstate Commerce Commission, in view of the certified copies of the Robinson filed tariffs, which were offered in evidence. Robinson also carried his own liability insurance (Exhibits D-9 for identification and D-10 for identification, p. 182, Supplemental Appendix). The failure to file these policies prior to the accident, did not deprive him of his operating rights but merely subjected him to any disciplinary action which the Commission might impose (Motor Carrier Act, 1935, 49 U.S.C.A. 312, 49 Stat. 555; 49 U.S.C.A. 322, 49 Stat. 564), nor did it impose upon the defendant, Ross, any greater burden or liability.

Where a statute prescribes a penalty for a violation of its provisions and gives no right of action to any person who may be injured by a violation, such a violation does not give rise to a cause of action.

Herod vs. *Mutual Chemical Co. of America*, 115 N. J. Law 369; 180 Atl. 432, where the Court of Errors and Appeals of the State of New Jersey held that an injured employee could not take advantage of the failure of an employer to file a report where the Workmen's Compensation Act provided merely a penalty for the failure of the employer to file the required report.

See also: *Rupp* vs. *Burgess*, 70 N. J. Law 7; 56 Atl. 166.

The record is bare of any action taken by the Commission against Robinson, or any effort by the Commission to impose any additional burden upon Ross for the conduct of Robinson.

It is respectfully submitted, therefore, that a writ of certiorari should be allowed according to the prayer in the petition.

Respectfully submitted,

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Petitioner.

SAUL NEMSER,
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